

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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STATE OF FLORIDA, by
ATTORNEY GENERAL ROBERT A. BUTTERWORTH,

STATE OF NEW YORK, by
ATTORNEY GENERAL ELIOT SPITZER,

STATE OF ARIZONA, by
ATTORNEY GENERAL JANET NAPOLITANO,

STATE OF ARKANSAS, by
ATTORNEY GENERAL MARK PRYOR,

STATE OF CONNECTICUT, by
ATTORNEY GENERAL RICHARD BLUMENTHAL,

STATE OF DELAWARE, by
ATTORNEY GENERAL M. JANE BRADY,

STATE OF HAWAII, by
ATTORNEY GENERAL EARL I. ANZAI,

STATE OF ILLINOIS, by
ATTORNEY GENERAL JIM RYAN,

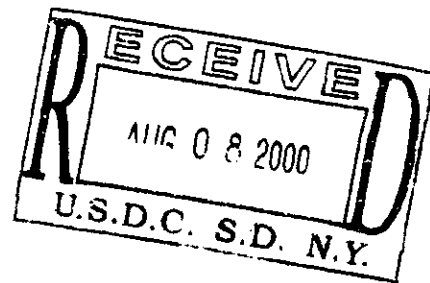
STATE OF INDIANA, by
ATTORNEY GENERAL KAREN M. FREEMAN-WILSON,

STATE OF IOWA, by
ATTORNEY GENERAL THOMAS J. MILLER,

STATE OF KANSAS, by
ATTORNEY GENERAL CARLA J. STOVALL,

STATE OF MARYLAND, by
ATTORNEY GENERAL J. JOSEPH CURRAN, JR.,

STATE OF MICHIGAN, by
ATTORNEY GENERAL JENNIFER M. GRANHOLM,



COMPLAINT
Civ. No. 00 CIV 5853

JURY TRIAL DEMANDED

STATE OF MISSISSIPPI, by
ATTORNEY GENERAL MIKE MOORE,

STATE OF MISSOURI, by
ATTORNEY GENERAL JEREMIAH W. (JAY) NIXON,

STATE OF NEVADA, by
ATTORNEY GENERAL FRANKIE SUE DEL PAPA,

STATE OF NEW MEXICO, by
ATTORNEY GENERAL PATRICIA A. MADRID,

STATE OF NORTH CAROLINA, by
ATTORNEY GENERAL MICHAEL F. EASLEY,

COMMONWEALTH OF THE NORTHERN
MARIANA ISLANDS, by
ATTORNEY GENERAL HERBERT D. SOLL,

STATE OF OKLAHOMA, by
ATTORNEY GENERAL W.A. DREW EDMONDSON

COMMONWEALTH OF PENNSYLVANIA, by
ATTORNEY GENERAL D. MICHAEL FISHER,

COMMONWEALTH OF PUERTO RICO, by
ATTORNEY GENERAL ANGEL ROTGER SABAT,

STATE OF RHODE ISLAND, by
ATTORNEY GENERAL SHELDON WHITEHOUSE,

STATE OF SOUTH CAROLINA, by
ATTORNEY GENERAL CHARLES M. CONDON,

STATE OF TEXAS, by
ATTORNEY GENERAL JOHN CORNYN,

STATE OF UTAH, by
ATTORNEY GENERAL JAN GRAHAM,

STATE OF VERMONT, by
ATTORNEY GENERAL WILLIAM H. SORRELL,

STATE OF WASHINGTON, by
ATTORNEY GENERAL CHRISTINE O. GREGOIRE,

STATE OF WEST VIRGINIA, by
ATTORNEY GENERAL DARRELL V. MCGRAW, JR.,

STATE OF WISCONSIN, by
ATTORNEY GENERAL JAMES E. DOYLE,

Plaintiffs,

v.

BMG MUSIC, BERTELSMANN MUSIC GROUP INC.,
CAPITOL RECORDS, INC., d/b/a EMI MUSIC DISTRIBUTION,
VIRGIN RECORDS AMERICA, INC., PRIORITY RECORDS,
L.L.C., MTS INC., d/b/a TOWER RECORDS,
MUSICLAND STORES CORPORATION, SONY MUSIC
ENTERTAINMENT, INC., TRANS WORLD
ENTERTAINMENT CORPORATION, UNIVERSAL
MUSIC GROUP, INC., UNIVERSAL MUSIC & VIDEO
DISTRIBUTION CORP., UMG RECORDINGS INC.,
WARNER-ELEKTRA-ATLANTIC CORPORATION,
WARNER MUSIC GROUP, INC., WARNER BROS.
RECORDS, INC., ATLANTIC RECORDING CORPORATION,
ELEKTRA ENTERTAINMENT GROUP, INC. and RHINO
ENTERTAINMENT COMPANY,

Defendants.

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NATURE OF THE CASE

1. The Plaintiff States and Commonwealths of Florida, New York, Arizona, Arkansas, Connecticut, Delaware, Hawaii, Illinois, Indiana, Iowa, Kansas, Maryland, Michigan, Mississippi, Missouri, Nevada, New Mexico, North Carolina, Northern Mariana Islands, Oklahoma, Pennsylvania, Puerto Rico, Rhode Island, South Carolina, Texas, Utah, Vermont, Washington, West Virginia and Wisconsin (collectively the "States") bring this antitrust action against BMG Music and Bertelsmann Music Group, Inc. (collectively "BMG"), Capitol Records, Inc., d/b/a EMI Music Distribution ("EMD"), Virgin Records America Inc., Priority Records,

L.L.C., MTS Inc., d/b/a Tower Records (“Tower”), Musicland Stores Corporation (“Musicland”), Sony Music Entertainment, Inc. (“Sony”), Trans World Entertainment Corporation (“Trans World”), Universal Music Group, Inc., Universal Music & Video Distribution Corp. and UMG Recordings Inc. (collectively “UMG”), Warner Music Group (“WMG”) and Warner-Elektra-Atlantic Corporation (“WEA”), Warner Bros. Records, Inc., Atlantic Recording Corp., Elektra Entertainment Group, Inc., and Rhino Entertainment Company (collectively the “WEA labels”) under the laws of the United States and of the States to recover damages suffered by the States’ consumers *resulting from illegal price-fixing agreements* between each of the defendant labels and distributors of prerecorded music (including compact discs (“CDs”), cassettes and albums) and certain traditional retailers.

2. The consumers, who are represented by the States’ Attorneys General, purchased prerecorded music products directly from retailers during the relevant time period, from in or about February 1995 to the present.

3. The purpose of the illegal agreements was to raise prices and reduce retail price competition which threatened the high and stable profit margins for CDs enjoyed by both the defendant labels and distributors and many music retailers.

4. This competitive threat arose *with the entry into music retailing of several discount retailers* (for example, Best Buy, Circuit City and Target), which could profitably undercut the prevailing high retail prices charged for CDs by traditional retailers. Consumers flocked to the discount retailers, which rapidly gained market share at the expense of traditional retailers.

5. The traditional retailers reacted by pressuring defendant distributors to impose minimum advertised pricing (“MAP”) policies which established the retail price levels at which

CDs were sold, thereby effectively reducing and/or eliminating retail price competition for CDs. Responding to that pressure, and desirous of eliminating retail competition for CDs which threatened their own high profit margins, each of the defendant distributors, with the approval and/or support of their affiliated labels, agreed to impose stronger MAP policies. Traditional retailers acknowledged the defendant distributors' agreements to strengthen the MAP policies by, among other things, sending letters to distributors thanking them for implementing stronger MAP policies.

6. These agreements to maintain resale prices took the form of harsh MAP policies adopted by the defendant distributors. These policies applied so broadly and punished violations so severely that they effectively precluded discount retailers from selling CDs below the prices set by the defendant distributors with the approval and/or support of their affiliated labels. Discount retailers initially protested vigorously, but the severe financial penalties which defendant distributors imposed on noncomplying retailers made resistance too costly for even the largest discount retailers.

7. The effect of these anticompetitive agreements has been twofold. First, retail CD prices, which had been dropping, were stabilized and then raised industry-wide. Second, the oligopoly of defendant distributors was able to maintain high wholesale prices and margins for CDs. As a result of both effects, consumers have paid higher prices for CDs than they would have absent the illegal agreements.

8. Accordingly, the States seek in this action (1) to recover, on behalf of their injured consumers, treble the damages flowing from defendants' unlawful conduct; (2) the imposition of civil penalties as provided by State statutes; and (3) injunctive relief sufficient to prohibit and

prevent any recurrence of defendants' conduct.

JURISDICTION AND VENUE

9. This complaint, which alleges violations of Section 1 of the Sherman Act, 15 U.S.C. § 1, is filed under and jurisdiction is conferred upon this Court by Section 4C of the Clayton Act, 15 U.S.C. § 15c, Section 4 of the Clayton Act, 15 U.S.C. § 15, and Section 16 of the Clayton Act, 15 U.S.C. § 26. The States, as *parens patriae* on behalf of all natural persons residing therein, seek to recover treble damages, their costs and expenses of suit and reasonable attorneys' fees, together with injunctive relief, for the injuries sustained as a result of the violations alleged herein by all such natural persons who purchased prerecorded music from retailers during the period from in or about February 1995 to the present.

10. The States also allege violations of State antitrust and/or unfair competition and related laws, and seek damages, injunctive relief, civil penalties, and related relief under those State laws.

11. Jurisdiction is further conferred upon this Court by 28 U.S.C. §§ 1331 and 1337.

12. Each of the defendants transacts business, committed an illegal or tortious act, or is found in this District, within the meaning and scope of 15 U.S.C. § 22, N.Y. Civ. Prac. L. and R. § 302, and 28 U.S.C. § 1391 (b) and (c).

DEFINITIONS

13. "Discount retailer" means an entity that sells prerecorded music products to consumers through stores that do not specialize in prerecorded music products. Discount retailers include, but are not limited to, mass merchandisers and electronics superstores such as Best Buy, Circuit City, K-Mart, Target and Wal-Mart.

14. "Label" means an entity that is in the business of producing prerecorded music, including contracting with artists and promoting prerecorded music products.

15. "Distributor" means an entity that distributes prerecorded music products on behalf of a music company or label. "Defendant distributors" means specifically BMG Music, EMI Music Distribution, Sony Music Entertainment, Inc., Universal Music & Video Distribution, and Warner-Elektra-Atlantic Corporation.

16. "Traditional retailer" means an entity that specializes in selling primarily precoded music products to consumers. Traditional retailers include, but are not limited to, Tower Musicland, Sam Goody, Record Town, Camelot, The Wall, Saturday Matinee, F.Y.E. (For Your Entertainment), Coconuts, Strawberries and Spec's.

17. The "relevant time period" is the period beginning February 1995 to the present.

THE PARTIES

18. The States bring this action in their sovereign capacities, as *parens patriae* on behalf of natural persons for whom the States may act, and as *parens patriae* on behalf of the States' citizens, economy and general welfare to enforce federal and state antitrust laws, and to recover damages sustained by natural person citizens as a result of illegal anticompetitive conduct.

19. Defendant BMG MUSIC is a general partnership organized and existing under the laws of the State of New York with its principal place of business at 1540 Broadway, New York, New York. Defendant BERTELSMANN MUSIC GROUP, INC. (together with BMG Music, "BMG") is a corporation organized and existing under the laws of the State of Delaware with its principal place of business at 1540 Broadway, New York, New York, and is the controlling general partner of BMG Music. BMG produces music and distributes CDs under various labels,

including RCA, Arista, BMG Classics, Windham Hill and Bad Boy Entertainment.

20. Defendant CAPITOL RECORDS, INC., d/b/a EMI MUSIC DISTRIBUTION (“EMD”), is a corporation organized and existing under the laws of the State of Delaware with its principal place of business at 1750 North Vine Street, Hollywood, California. EMD distributes CDs for Capitol Records’ affiliated labels, including Capitol, Capitol Nashville, Blue Note, Angel Records and EMI Latin. Defendant VIRGIN RECORDS AMERICA, INC., a corporation organized and existing under the laws of the State of California with its principal place of business at 338 North Foothill Road, Beverly Hills, California, is a label ultimately owned by Capitol Records, Inc. Defendant PRIORITY RECORDS, LLC, a limited liability company organized and existing under the laws of the State of California with its principal place of business at 6430 Sunset Blvd., Hollywood, California, is a label ultimately owned by Capitol Records, Inc.

21. Defendant MTS, INC., d/b/a TOWER RECORDS (“Tower”) is a corporation organized and existing under the laws of the State of California, with its principal place of business at 2500 Del Monte Street-Building C, West Sacramento, California. MTS owns and franchises more than 230 stores in nearly 20 countries. Its Tower stores offer a wide selection of prerecorded music, books and videos.

22. Defendant MUSICLAND STORES CORPORATION (“Musicland”) is a corporation organized and existing under the laws of the State of Delaware with its principal place of business at 10400 Yellow Circle Drive, Minnetonka, Minnesota. Musicland operates more than 1,300 retail stores nationwide, including nearly 700 mall-based Sam Goody and Musicland stores, which sell CDs, videos and related items.

23. Defendant SONY MUSIC ENTERTAINMENT, INC. ("Sony") is a corporation organized and existing under the laws of the State of Delaware with its principal place of business at 550 Madison Avenue, New York, New York. Sony produces music and distributes CDs under various labels, including Columbia, Epic, WORK Group, C2, Nashville. Sony Classical, and Sony Wonder.

24. Defendant TRANS WORLD ENTERTAINMENT CORPORATION ("Trans World") is a corporation organized and existing under the laws of the State of New York, with its principal place of business at 38 Corporate Circle, Albany, New York. Trans World operates over 900 specialty music and video stores in 44 states, including mall-based stores under the names Record Town, Camelot Music, The Wall, Saturday Matinee and F.Y.E. (For Your Entertainment) and free-standing stores under the names Coconuts Music & Movies, Strawberries, Spec's Music and Planet Music.

25. Defendant UNIVERSAL MUSIC GROUP, INC. ("UNI") is a corporation organized and existing under the laws of California with its principal place of business at 100 Universal City Plaza, Universal City, California. Defendants UNIVERSAL MUSIC & VIDEO DISTRIBUTION CORP. and UMG RECORDINGS INC. (collectively "UMG") are corporations organized and existing under the laws of the State of Delaware with their principal places of business at 70 Universal City Plaza, Universal City, California. UMG produces and distributes prerecorded music under various labels, including A&M, Def Jam, Geffen, Island, MCA, Motown, Polydor, Universal and Verve.

26. Defendant WARNER-ELEKTRA-ATLANTIC CORPORATION ("WEA") is a corporation organized and existing under the laws of the State of New York with its principal

place of business at 111 North Hollywood Way, Burbank, California. Defendant WARNER MUSIC GROUP, INC. ("WMG") is a corporation organized and existing under the laws of the State of Delaware with its principal place of business at 75 Rockefeller Plaza, New York, New York. Defendant WARNER BROS. RECORDS INC., is a corporation organized and existing under the laws of the State of Delaware with its principal place of business at 75 Rockefeller Plaza, New York, New York. Defendant ATLANTIC RECORDING CORPORATION is a corporation organized and existing under the laws of the State of Delaware with its principal place of business at 75 Rockefeller Plaza, New York, New York. Defendant RHINO ENTERTAINMENT COMPANY is a corporation organized and existing under the laws of the State of Delaware with its principal place of business at 10635 Santa Monica Blvd., Los Angeles, California. Defendant ELEKTRA ENTERTAINMENT GROUP, INC. is a corporation organized and existing under the laws of the State of Florida with its principal place of business at 1413 Ryan Lane, Royal Palm Beach, Florida. Warner Brothers Records Inc., Atlantic Recording Corporation, Rhino Entertainment Company and Elektra Entertainment Group, Inc. (collectively, the "WEA labels") produce prerecorded music that is distributed by WEA.

CO-CONSPIRATORS

27. Various firms, corporations and other persons, known and unknown to the States and not named as defendants herein, including without limitation unnamed retailers, wholesalers, labels, one-stops and rack jobbers, have participated as co-conspirators with the Defendants in the violations alleged in this Complaint and have performed acts in furtherance thereof.

TRADE AND COMMERCE

28. During the relevant period, each of the defendant distributors sold prerecorded music,

including CDs, to retailers located throughout the United States. These products were transported across state lines, were shipped in interstate commerce, and were sold in each of the various States by retailers.

29. The activities of each of the defendants, including receiving, distributing, and selling prerecorded music products, were in the regular, continuous and substantial flow of interstate commerce and have had and do have a substantial effect upon interstate commerce.

PRODUCT AND GEOGRAPHIC MARKETS

30. The product markets in this case are wholesale and retail sales of prerecorded music, including markets and submarkets for CDs, cassettes, and albums. Such products are highly valued by consumers, and have no close substitutes.

31. The geographic markets in this case are the United States, for sales of prerecorded music at wholesale, and national, local and regional markets and submarkets throughout the United States, for sales of prerecorded music at retail.

THE PRERECORDED MUSIC INDUSTRY

32. Each year, consumers pay billions of dollars at retail for prerecorded music products, the vast majority of which are CDs. According to an industry trade association estimate, in 1999, the total U.S. market for prerecorded music was estimated at \$14.6 billion.

33. Since a spate of merger activity in the late 1980s and early 1990s, the prerecorded music industry has been dominated by six major holding companies, BMG, EMI, Sony, Universal, Time Warner and PolyGram. Their number was reduced to five when Universal's parent company acquired PolyGram in July 1998. Generally, these holding companies are vertically integrated, comprising both labels and distribution companies. Artists enter into

contracts with labels, generally for a certain number of releases during the contract term.

Generally, the label is responsible, working jointly with the artists, for “content development” and for manufacturing. Each label also plays a role, with its affiliated distribution company, in the marketing of the finished product. The distribution company is responsible for the wholesale sale and distribution to retailers of new releases and “catalog” works from inventory.

34. There is a fringe of “independent” music distributors, but high barriers to entry shield the defendant distributors both from expansion by such fringe firms and from significant new entry into the wholesale market for prerecorded music by new firms. These barriers arise from, among other things, the advantages that their established position and ownership of “back catalogs” of successful recordings confer on the major distributors. For example, the enormous financial resources of the defendants give them decisive advantages over would-be competitors in acquiring and maintaining control of a portfolio of successful artists.

35. The result of these and other factors is that, at the wholesale level, the prerecorded music industry is highly concentrated. The wholesale market is dominated by only a few sellers whose market shares have remained relatively stable over time and which view each other as their only effective competitors.

36. The defendant distributors and labels promote their products directly and pay retailers to promote them. These promotional efforts are usually either media advertisements, or some form of in-store promotion. In-store promotions often involve eye-catching placement of a particular product, for example at an end-cap (the end of a merchandise aisle) or at the cash register. The promotional funds that the defendant distributors and labels are able to provide to retailers are very substantial, running to many millions of dollars annually. Moreover, those

promotional payments often exceed the cost to the retailer of providing the promotional services in question.

THE THREAT OF COMPETITION

37. Entry into the retail prerecorded music market by discount retailers in the early 1990s introduced competition into the retail, and then threatened the wholesale, market for prerecorded music. The danger presented by this new competition quickly became apparent to traditional retailers. The new entrants, including discount retailers Best Buy and Circuit City, offered competitive prices to consumers. According to the estimate of one traditional retailer, the average price of a CD went from \$15 to \$10 in a short period of time.

38. Discount retailers' sales grew dramatically, and price competition among music retailers spread. Although the traditional retailers were forced to drop their prices to some extent, they nevertheless lost market share to the discount retailers such as Best Buy, Circuit City, Target, Wal-Mart, and K-Mart.

39. It was not only traditional retailers who felt threatened. The defendant distributors recognized that retail price competition was beginning to put pressure on wholesale margins as well, affecting their ability to raise wholesale prices charged to retailers.

40. The defendant distributors initially instituted MAP policies early in the 1990s. Pursuant to the terms of these policies, retailers could not obtain reimbursement for advertising expenditures for titles advertised below the prices listed on pricing schedules. But these MAP policies did not push back the rising tide of price competition. As reported in the March 22, 1997 issue of *Billboard*, "When the price war began, the six majors each implemented their own MAP policies, but those early efforts were considered ineffective."

THE SCHEME TO STOP COMPETITION

41. The defendant distributors, labels and retailers belong to the National Association of Recording Merchandisers ("NARM"), an industry trade association. Representatives of the defendant distributors, labels and retailers regularly attended meetings of NARM. The defendant distributors' officers and chief executives have served on the board of directors and other various committees and groups of NARM, as have the retailers.

42. NARM provided a forum for private discussions between retailers, labels and distributors regarding MAP policies and MAP pricing levels.

43. By 1995, with price competition intensifying, and traditional retailers in deepening financial difficulties, these retailers began sending the strong message to the defendant distributors that decisive steps were necessary. In February 1995, Jack Eugster, the CEO of defendant Musicland, delivered the keynote address at the NARM convention.

44. Eugster, who was also NARM's President, spoke to an audience of industry executives, including ranking representatives of the defendant distributors, labels and retailers. He decried the devaluation of CDs and called for a return to a sane marketplace.

45. In advocating joint action between the defendant distributors, labels and traditional retailers in the form of strengthened MAP programs, Eugster said:

This discussion brings us then to retailer, distributor and music company partnerships. More than ever, these partnerships need to be tightened. Our industry health is going to depend on proactive programs that are targeted to prevent the devaluation of CD's. As record companies, be wary of marketers who use your products as shills, come-ons and loss-leaders for other merchandise....

For years, wholesalers in many industries have found that minimum advertised price programs to qualify co-op dollars have been especially effective in supporting the value of perceptions of their merchandise. Most music companies

and movie studios have MAP programs. These programs accomplish their goals best when the MAP price is sufficiently above wholesale cost as to not de-value the product in the consumer's mind. Also, effective MAP programs consider in-store pricing as well as advertised prices and condition co-op support for the entire ad on MAP compliance.

46. Following the NARM convention of 1995, traditional retailers, including defendants Musicland, Tower and Trans World, continued to press the defendant distributors to strengthen their MAP programs by implementing the provisions which Eugster had proposed. For example, in April 1995, a representative of defendant Tower met with an executive of EMD to urge EMD to increase MAP without raising wholesale prices.

47. An executive of defendant Musicland lobbied representatives of each defendant distribution company for the imposition of stronger MAP policies. This executive urged defendant distributors to implement MAP policies with penalties that were sufficiently severe to insure MAP compliance by discount retailers.

48. Gradually, and under persistent pressure, each of the defendant distributors with the approval and/or support of their affiliated labels agreed to implement stronger MAP policies.

49. In a series of announcements to their retail customers in 1995 and 1996, the defendant distributors transformed their MAP programs into blunt and effective instruments for putting an end to price competition, along the precise lines that Eugster had laid down. In three key respects, the policies adopted by the distributor defendants were substantially similar.

50. First, the ban on communicating discounted prices to consumers was not confined to "advertised" prices in print and electronic media. Rather, it extended to all in-store displays and signs, with the sole exception of a small price sticker on the CD itself. In effect, the policies prohibited virtually all commercially practicable means of communicating discounted prices to

consumers.

51. Second, a single violation by a retailer could have far-reaching economic consequences, such as the loss of all promotional funds available from that distributor for a period of from sixty to ninety days from the date of the violation. Moreover, a violation at a single store would jeopardize promotional funds for an entire chain.

52. Third, the policies broadly applied to any advertisement or promotion undertaken by a retailer with respect to a defendant distributor's and label's prerecorded music products, whether or not any advertising funds provided by the distributor and/or label were used to pay for the advertisement or promotion. In other words, sanctions were triggered under the policies even by advertisements or promotions funded entirely by the retailers themselves, if those advertisements or promotions featured prices below those dictated by the defendant distributors and/or labels.

53. By January 1, 1996, defendant WEA had implemented a stronger MAP policy that included all of the provisions outlined in paragraphs 50-52 above.

54. By July 1, 1996, defendant UMG had implemented a stronger MAP policy that included all of the provisions outlined in paragraphs 50-52 above.

55. By July 27, 1996, defendant EMD had implemented a stronger MAP policy that included all of the provisions outlined in paragraphs 50-52 above.

56. By August 5, 1996, defendant Sony had implemented a stronger MAP policy that included all of the provisions outlined in paragraphs 50-52 above.

57. By January 2, 1997, defendant BMG had implemented a stronger MAP policy that included similar provisions.

58. Pressure from traditional retailers played a key role not only in the initial adoption of these stricter MAP provisions, but in ensuring that each of the distributor defendants adopted substantially equivalent policies, so that they applied market-wide. The defendant distributors who lagged in implementing any of these three provisions were pushed and prodded until each of them had adopted a uniformly tough stance toward discount retailers.

59. An executive of Camelot was particularly active in this respect. Through interoffice memoranda, he reported to his associates on the strengthened MAP policies of the defendant distributors. After describing the latest strict MAP provisions implemented by a particular distributor, the executive urged his colleagues to continue pressuring the distributors who had not yet strengthened their policies.

60. After each wave of tighter MAP policies, traditional retailers contacted the defendant distributors to thank them and applaud their efforts in strengthening the policies.

61. Having reached their illegal agreements, the defendant distributors and traditional retailers proceeded to enforce them. Retailers policed the agreements by informing the defendant distributors of violations, and defendant distributors cooperated by repeatedly imposing sanctions on discount retailers. Ultimately, the financial pain that the conspirators inflicted through such enforcement efforts resulted in unwilling agreements by discount retailers to adhere to agreed-upon price levels.

62. For example, a leading discount retailer felt compelled, after becoming the target of MAP sanctions, to explicitly assure one distributor defendant, in writing, of its agreement to begin adhering to the distributor's MAP policy. Another discount retailer sought the advance approval of a distributor defendant for certain promotional strategies to ensure that it did not run

afoul of the distributor's MAP policy.

63. Traditional retailers, on the other hand, repeatedly assured the defendant distributors of their gratitude and expressed their willingness to abide by the terms and price levels of the MAP policies.

THE INJURY TO COMPETITION AND CONSUMERS

64. The agreements reached between and enforced marketwide by the defendant distributors, with the support and/or approval of the labels, and traditional retailers were in commercial reality and practical effect agreements on resale prices, for at least three reasons.

65. First, because retailers have no incentive to sell below the advertised price, fixing advertised price levels effectively fixes retail price levels. The purpose of media advertising is to attract consumers to the retail stores. Advertising CDs at higher prices than they would be sold at the retail stores would serve no logical business purpose.

66. Second, the broadening of the MAP policies to cover virtually all price communications from retailers to consumers, whether in-store or in the media, and even to advertisements funded solely by retailers, essentially ended retailers' ability to sell prerecorded music products at discounted prices.

67. Third, the fact that a single violation of the defendant distributors' MAP policies could entail the loss of all advertising funds that the retailer would otherwise have received during a ninety or sixty day period meant that the cost to retailers of violating the policies was simply too high. Defendant distributors and labels were providing upwards of millions of dollars in advertising funds to retailers per year.

68. As a result of these agreements, retail and wholesale prices for prerecorded music

increased. Such increases were exactly what the defendant distributors, labels and the conspiring retailers intended to achieve by implementing their agreements on price levels.

69. There was no legitimate business reason for the MAP provisions; their sole purpose was to eliminate competition and stabilize retail price levels. Indeed, the precise levels at which MAP prices were to be set were a frequent topic of discussion between the defendant distributors and traditional retailers.

70. Unsurprisingly, therefore, retail prices rose. The discount retailers were forced to raise their prices, and other retailers followed suit. The causal connection between the strengthened MAP policies and increasing prices was apparent to industry observers at the time. By June 8, 1996, *Billboard* reported that "since these [MAP] policies have come into play, sanity appears to be returning to hit pricing."

71. Defendant Trans World itself reported in one of its securities filings the success -- from its point of view -- of the MAP policies:

During 1996, many of the major music vendors began to enforce programs such as the Minimum Advertised Pricing Program.... The enforcement of the MAP Program has been successful in stabilizing prices in the industry. Non-traditional retailers have ... maintained less aggressive pricing policies. [Trans World Entertainment Corp. Form 10-K filed March 31, 1998.]

72. With retail price pressure removed, the defendant distributors were able to increase wholesale prices, and they did so, leading to yet higher retail prices for consumers. These retail and wholesale price increases occurred despite the fact that, as records of one of the music companies reveal, per-CD unit costs had decreased sharply during the 1990s. As a result of the higher retail prices, consumers of plaintiff States have suffered economic injury.

**FIRST CLAIM FOR RELIEF AS TO DEFENDANTS BMG, MUSICLAND,
TOWER AND TRANS WORLD**
(PER SE VIOLATION OF SECTION 1 OF THE SHERMAN ACT)

73. The States repeat and reallege each and every allegation contained in paragraphs 1-72 with the same force and effect as if here set forth in full.

74. Beginning in or about February 1995, and continuing thereafter until the present, Defendants BMG, Musicland, Tower and Trans World and their co-conspirators engaged in unlawful contracts, combinations, or conspiracies in restraint of interstate trade and commerce, in violation of Section 1 of the Sherman Act.

75. The combinations and conspiracies consisted of continuing agreements, understandings, or concert of action between Defendants BMG, Musicland, Tower and Trans World and their co-conspirators, the substantial terms of which were to fix, raise, maintain or stabilize the retail prices at which BMG's prerecorded music products were advertised and sold to the consuming public. Such combinations or conspiracies are per se violations of Section 1 of the Sherman Act.

76. For the purpose of forming, effectuating, and furthering the conspiracies, Defendants BMG, Musicland, Tower, Trans World and their co-conspirators did those things which they combined, agreed, and conspired to do as, among other things, set forth in paragraphs 1-72 above.

**SECOND CLAIM FOR RELIEF AS TO DEFENDANTS BMG, MUSICLAND
TOWER AND TRANS WORLD**
(RULE OF REASON VIOLATION OF SECTION 1 OF THE SHERMAN ACT)

77. The States repeat and reallege each and every allegation contained in paragraphs 1-72 with the same force and effect as if here set forth in full.

78. Beginning in or about February 1995, and continuing thereafter until the present. Defendants BMG, Musicland, Tower, Trans World and their co-conspirators engaged in unlawful contracts, combinations, or conspiracies in unreasonable restraint of interstate trade and commerce, in violation of Section 1 of the Sherman Act.

79. The combinations and conspiracies consisted of continuing agreements, understandings, or concert of action among Defendants BMG, Musicland, Tower, Trans World and their co-conspirators, the substantial terms of which were to fix, raise, maintain or stabilize the retail prices at which BMG's prerecorded music products were advertised and sold to the consuming public. Such combinations or conspiracies are unreasonable restraints of trade in violation of Section 1 of the Sherman Act.

80. For the purpose of forming, effectuating, and furthering the conspiracies, Defendants BMG, Musicland, Tower, Trans World and their co-conspirators did those things which they combined, agreed, and conspired to do as, among other things, set forth in paragraphs 1-72 above.

**FIRST CLAIM FOR RELIEF AS TO DEFENDANTS EMD, VIRGIN RECORDS
AMERICA, INC., PRIORITY RECORDS, LLC, MUSICLAND,
TOWER AND TRANS WORLD**
(PER SE VIOLATION OF SECTION 1 OF THE SHERMAN ACT)

81. The States repeat and reallege each and every allegation contained in paragraphs 1-72 with the same force and effect as if here set forth in full.

82. Beginning in or about February 1995, and continuing thereafter to the present, Defendants EMD and affiliated labels, Musicland, Tower and Trans World and their co-conspirators engaged in unlawful contracts, combinations, or conspiracies in restraint of

interstate trade and commerce, in violation of Section 1 of the Sherman Act.

83. The combinations and conspiracies consisted of continuing agreements, understandings, or concert of action between Defendants EMD and affiliated labels, Musicland, Tower and Trans World and their co-conspirators, the substantial terms of which were to fix, raise, maintain or stabilize the retail prices at which EMD's prerecorded music products were advertised and sold to the consuming public. Such combinations or conspiracies are per se violations of Section 1 of the Sherman Act.

84. For the purpose of forming, effectuating, and furthering the conspiracies, Defendants EMD and affiliated labels, Musicland, Tower, Trans World and their co-conspirators did those things which they combined, agreed, and conspired to do as, among other things, set forth in paragraphs 1-72 above.

**SECOND CLAIM FOR RELIEF AS TO DEFENDANTS EMD, VIRGIN RECORDS
AMERICA, INC., PRIORITY RECORDS, LLC, MUSICLAND,
TOWER AND TRANS WORLD**
(RULE OF REASON VIOLATION OF SECTION 1 OF THE SHERMAN ACT)

85. The States repeat and reallege each and every allegation contained in paragraphs 1-72 with the same force and effect as if here set forth in full.

86. Beginning in or about February 1995, and continuing thereafter to the present, Defendants EMD and affiliated labels, Musicland, Tower, Trans World and their co-conspirators engaged in unlawful contracts, combinations, or conspiracies in unreasonable restraint of interstate trade and commerce, in violation of Section 1 of the Sherman Act.

87. The combinations and conspiracies consisted of continuing agreements, understandings, or concert of action among Defendants EMD and affiliated labels, Musicland,

Tower, Trans World and their co-conspirators, the substantial terms of which were to fix, raise, maintain or stabilize the retail prices at which EMD's prerecorded music products were advertised and sold to the consuming public. Such combinations or conspiracies are unreasonable restraints of trade in violation of Section 1 of the Sherman Act.

88. For the purpose of forming, effectuating, and furthering the conspiracies, Defendants EMD and affiliated labels, Musicland, Tower, Trans World and their co-conspirators did those things which they combined, agreed, and conspired to do as, among other things, set forth in paragraphs 1-72 above.

**FIRST CLAIM FOR RELIEF AS TO DEFENDANTS SONY, MUSICLAND,
TOWER AND TRANS WORLD**

(PER SE VIOLATION OF SECTION 1 OF THE SHERMAN ACT)

89. The States repeat and reallege each and every allegation contained in paragraphs 1-72 with the same force and effect as if here set forth in full.

90. Beginning in or about February 1995, and continuing thereafter to the present, Defendants Sony, Musicland, Tower and Trans World and their co-conspirators engaged in unlawful contracts, combinations, or conspiracies in restraint of interstate trade and commerce, in violation of Section 1 of the Sherman Act.

91. The combinations and conspiracies consisted of continuing agreements, understandings, or concert of action between Defendants Sony, Musicland, Tower and Trans World and their co-conspirators, the substantial terms of which were to fix, raise, maintain or stabilize the retail prices at which Sony's prerecorded music products were advertised and sold to the consuming public. Such combinations or conspiracies are per se violations of Section 1 of the Sherman Act.

92. For the purpose of forming, effectuating, and furthering the conspiracies, Defendants Sony, Musicland, Tower, Trans World and their co-conspirators did those things which they combined, agreed, and conspired to do as, among other things, set forth in paragraphs 1-72 above.

**SECOND CLAIM FOR RELIEF AS TO DEFENDANTS SONY, MUSICLAND
TOWER AND TRANS WORLD**
(RULE OF REASON VIOLATION OF SECTION 1 OF THE SHERMAN ACT)

93. The States repeat and reallege each and every allegation contained in paragraphs 1-72 with the same force and effect as if here set forth in full.

94. Beginning in or about February 1995, and continuing thereafter to the present, Defendants Sony, Musicland, Tower, Trans World and their co-conspirators engaged in unlawful contracts, combinations, or conspiracies in unreasonable restraint of interstate trade and commerce, in violation of Section 1 of the Sherman Act.

95. The combinations and conspiracies consisted of continuing agreements, understandings, or concert of action among Defendants Sony, Musicland, Tower, Trans World and their co-conspirators, the substantial terms of which were to fix, raise, maintain or stabilize the retail prices at which Sony's prerecorded music products were advertised and sold to the consuming public. Such combinations or conspiracies are unreasonable restraints of trade in violation of Section 1 of the Sherman Act.

96. For the purpose of forming, effectuating, and furthering the conspiracies, Defendants Sony, Musicland, Tower, Trans World and their co-conspirators did those things which they combined, agreed, and conspired to do as, among other things, set forth in paragraphs 1-72 above.

**FIRST CLAIM FOR RELIEF AS TO DEFENDANTS UNI, UMG,
MUSICLAND, TOWER AND TRANS WORLD**
(PER SE VIOLATION OF SECTION 1 OF THE SHERMAN ACT)

97. The States repeat and reallege each and every allegation contained in paragraphs 1-72 with the same force and effect as if here set forth in full.

98. Beginning in or about February 1995, and continuing thereafter to the present. Defendants UNI, UMG, Musicland, Tower and Trans World and their co-conspirators engaged in unlawful contracts, combinations, or conspiracies in restraint of interstate trade and commerce, in violation of Section 1 of the Sherman Act.

99. The combinations and conspiracies consisted of continuing agreements, understandings, or concert of action between Defendants UNI, UMG, Musicland, Tower and Trans World and their co-conspirators, the substantial terms of which were to fix, raise, maintain or stabilize the retail prices at which UMG's prerecorded music products were advertised and sold to the consuming public. Such combinations or conspiracies are per se violations of Section 1 of the Sherman Act.

100. For the purpose of forming, effectuating, and furthering the conspiracies, Defendants UNI, UMG, Musicland, Tower, Trans World and their co-conspirators did those things which they combined, agreed, and conspired to do as, among other things, set forth in paragraphs 1-72 above.

**SECOND CLAIM FOR RELIEF AS TO DEFENDANTS UNI, UMG,
MUSICLAND, TOWER AND TRANS WORLD**
(RULE OF REASON VIOLATION OF SECTION 1 OF THE SHERMAN ACT)

101. The States repeat and reallege each and every allegation contained in paragraphs 1-72 with the same force and effect as if here set forth in full.

102. Beginning in or about February 1995, and continuing thereafter to the present, Defendants UNI, UMG, Musicland, Tower, Trans World and their co-conspirators engaged in unlawful contracts, combinations, or conspiracies in unreasonable restraint of interstate trade and commerce, in violation of Section 1 of the Sherman Act.

103. The combinations and conspiracies consisted of continuing agreements, understandings, or concert of action between Defendants UNI, UMG, Musicland, Tower, Trans World and their co-conspirators, the substantial terms of which were to fix, raise, maintain or stabilize the retail prices at which UMG's prerecorded music products were advertised and sold to the consuming public. Such combinations or conspiracies are unreasonable restraints of trade in violation of Section 1 of the Sherman Act.

104. For the purpose of forming, effectuating, and furthering the conspiracies, Defendants UNI, UMG, Musicland, Tower, Trans World and their co-conspirators did those things which they combined, agreed, and conspired to do as, among other things, set forth in paragraphs 1-72 above.

**FIRST CLAIM FOR RELIEF AS TO DEFENDANTS WEA, WMG,
THE WEA LABELS, MUSICLAND, TOWER AND TRANS WORLD**
(PER SE VIOLATION OF SECTION 1 OF THE SHERMAN ACT)

105. The States repeat and reallege each and every allegation contained in paragraphs 1-72 with the same force and effect as if here set forth in full.

106. Beginning in or about February 1995, and continuing thereafter to the present, Defendants WEA, WMG, the WEA labels, Musicland, Tower and Trans World and their co-conspirators engaged in unlawful contracts, combinations, or conspiracies in restraint of interstate trade and commerce, in violation of Section 1 of the Sherman Act.

107. The combinations and conspiracies consisted of continuing agreements, understandings, or concert of action between Defendants WEA, WMG, the WEA labels, Musicland, Tower and Trans World and their co-conspirators, the substantial terms of which were to fix, raise, maintain or stabilize the retail prices at which WEA's prerecorded music products were advertised and sold to the consuming public. Such combinations or conspiracies are per se violations of Section 1 of the Sherman Act.

108. For the purpose of forming, effectuating, and furthering the conspiracies, Defendants WEA, WMG, WEA labels, Musicland, Tower, Trans World and their co-conspirators did those things which they combined, agreed, and conspired to do as, among other things, set forth in paragraphs 1-72 above.

**SECOND CLAIM FOR RELIEF AS TO DEFENDANTS WEA, WMG,
THE WEA LABELS, MUSICLAND, TOWER AND TRANS WORLD**
(RULE OF REASON VIOLATION OF SECTION 1 OF THE SHERMAN ACT)

109. The States repeat and reallege each and every allegation contained in paragraphs 1-72 with the same force and effect as if here set forth in full.

110. Beginning in or about February 1995, and continuing thereafter to the present, Defendants WEA, WMG, the WEA labels, Musicland, Tower, Trans World and their co-conspirators engaged in unlawful contracts, combinations, or conspiracies in restraint of interstate trade and commerce, in violation of Section 1 of the Sherman Act.

111. The combinations and conspiracies consisted of continuing agreements, understandings, or concert of action between Defendants WEA, WMG, the WEA labels, Musicland, Tower, Trans World and their co-conspirators, the substantial terms of which were to fix, raise, maintain or stabilize the retail prices at which WEA's prerecorded music products were

advertised and sold to the consuming public. Such combinations or conspiracies are an unreasonable restraint of trade in violation of Section 1 of the Sherman Act.

112. For the purpose of forming, effectuating, and furthering the conspiracies, Defendants WEA, WMG, the WEA labels, Musicland, Tower, Trans World and their co-conspirators did those things which they combined, agreed, and conspired to do as, among other things, set forth in paragraphs 1-72 above.

THIRD CLAIM FOR RELIEF AS TO EACH OF THE DEFENDANTS

113. The Plaintiff States repeat and reallege each and every allegation contained in paragraphs 1 - 72 with the same force and effect as if here set forth in full.

114. The aforementioned conspiracies by Defendants and their co-conspirators were and are in violation of Florida Statutes § 501.201 *et seq.*, § 542.18; N.Y. Gen. Bus. Law §§ 340 *et seq.*; Arizona Uniform State Antitrust Act, Ariz. Rev. Stat. Ann. 144-1402, *et seq.*; Arkansas Deceptive Trade Practices Act, Ark. Code Ann. § 4-88-101 *et seq.* and Ark. Code Ann. § 4-75-301 *et seq.*; Connecticut Gen. Stat. § 35-24 *et seq.*; Delaware Antitrust Act, 6 Delaware Code Chapter 21, and Delaware's Uniform Deceptive Trade Practices Act, 6 Delaware Code, Subchapter 111, § 2532; Hawaii Revised Statutes §§ 480-2, 480-4; Illinois Antitrust Act 740 I.L.C.S. 10/1 *et seq.*; Indiana Code Ann. § 24-1-1-1, § 24-1-2-1; Iowa Competition Law, Iowa Code Chapter 553, §§ 553.1 *et seq.*; Kansas Statutes Annotated §§ 50-101 *et seq.*; Maryland Antitrust Act, Md. Com. Law Code Ann. §§ 11-201 *et seq.*; Michigan Antitrust Reform Act (MARA), Mich. Comp. Laws Ann. §§ 445.771 *et seq.*; Miss. Code Ann. §§ 75-24-1 *et seq.*; Missouri Antitrust Law, §§ 416.011 *et seq.*; Nevada Unfair Trade Practices Act, Nev. Rev. Stat. Chapter 598A; §1 of the New Mexico Antitrust Act, §§ 57-1-1 *et seq.*, NMSA 1978 (1995

Repl.); North Carolina General Statutes §§ 75-1, 75-1.1, 75-2; 4 CMC § 5201 *et seq.*; Oklahoma Antitrust Reform Act, 79 O.S. Supp. 1999, §§ 201 *et seq.*; 75 Pennsylvania Stat. Ann. § 201-1 *et seq.*; Puerto Rico Laws Ann., Title 10, ch. 13, § 257-276; Rhode Island Antitrust Act, R.I. Gen. Laws § 6-36-6; South Carolina Unfair Trade Practices Act, §§ 39-5-10 *et seq.*; Texas Free Enterprise and Antitrust Act of 1983, Tex. Bus. & Com. Code § 15.01 *et seq.*; Utah Code, Title 76, Chapter 10, § 76-10-911 *et seq.*; Vermont Consumer Fraud Act, 9 VSA § 2451 *et seq.*; Washington Consumer Protection Act, RCW 19.86.030; West Virginia Antitrust Act, W. Va. Code §§ 47-18-1 *et seq.*, and the West Virginia Consumer Credit and Protection Act, W. Va. Code §§ 46A-1-101 *et seq.*; Wisconsin Trust and Monopolies Law, Wis. Stat. §§ 133.03(1), 133.04, 133.16, 133.17 and 133.18.

EFFECTS

115. Each of the aforesaid unlawful contracts, combinations and conspiracies by each of the defendant distributors and their co-conspirators had the following effects, among others:

116. The retail purchase prices for prerecorded music products sold throughout the United States were fixed, raised, maintained or stabilized at artificial noncompetitive levels;

117. Price competition among retailers for the sale of prerecorded music products was restrained; and

118. Purchasers of prerecorded music products were denied the benefits of free and open competition among retailers and among wholesalers of those products, and as a result, paid more for such products than they would have in a competitive market.

INJURY

119. As a result of each of the illegal contracts, combinations, and conspiracies alleged

above, natural persons residing in the States have sustained injury to their property.

120. Natural persons residing within the States are threatened with further imminent and irreparable injury to their property unless Defendants are enjoined from their illegal conduct.

PRAYER FOR RELIEF

WHEREFORE, the States pray that this Court

a. Adjudge and decree that each of the Defendants has engaged in an unlawful contract, combination or conspiracy in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1;

b. Adjudge and decree that each of the Defendants has violated each of the state statutes referred to above;

c. Enter judgment in favor of the States, in their sovereign capacities as *parens patriae*, and against each of the Defendants, for threefold the damages determined to have been sustained by natural persons residing within the States as a result of each of the Defendants' violations of the above-referenced federal and state antitrust laws;

d. Enter judgment against each Defendant for the maximum civil penalty allowed under the above-referenced state antitrust laws;

e. Award the States the costs and expenses of suit, including reasonable attorneys' fees;

f. Enjoin and restrain each of the Defendants from, in any manner, directly or indirectly, maintaining or renewing the aforesaid unlawful contracts or any concert of action having similar purpose or effect, and from adopting or following any practice, plan, program or design having a similar purpose or effect; and

g. Grant such other and further relief as the Court may deem just and proper.

JURY DEMAND

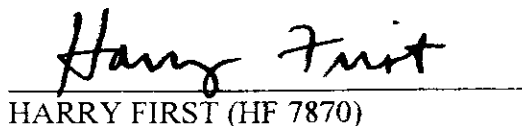
PLEASE TAKE NOTICE that Plaintiff States demand a trial by jury pursuant to Rule 38(b) of the Federal Rules of Civil Procedure of all issues triable of right by a jury.

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